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In the Supreme Court of the United States

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,
PETITIONER

v.

ELLA WILLIAMS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether an impairment that limits an individual's ability to perform particular job-related manual tasks can constitute a "disability" under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102(2)(A), even if there has been no finding that the plaintiff has been excluded from a class of jobs or a sufficiently broad range of jobs to establish a substantial limitation on the "major life activity" of "working," and no finding that the plaintiff's impairment substantially limits her ability to perform manual tasks outside of work.

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INTEREST OF THE UNITED STATES

This case concerns the proper understanding of the term "disability" as that term is used in the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* The Department of Justice and the Equal Employment Opportunity Commission (EEOC) are charged with enforcing the ADA, and those agencies have promulgated regulations and interpretive guidance concerning that statutory term. The Department of Labor has promulgated comparable regulations for purposes of the Rehabilitation Act of 1973 (Rehabilitation Act), 29 U.S.C. 701 *et seq.* Moreover, because the Rehabilitation Act makes the standards of Title I of the ADA (42 U.S.C. 12111-12117) applicable to the federal government, see 29 U.S.C. 791(d) (1994 & Supp.

V 1999), the United States has a significant interest in the principles used to determine whether an individual has a "disability" within the meaning of the ADA.

STATEMENT

1. Title I of the ADA prohibits discrimination by any covered entity "against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. 12112(a). In pertinent part, the ADA defines the term "disability" as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. 12102(2)(A). The forms of employment discrimination prohibited by Title I of the ADA include "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless [the employer] can demonstrate that the accommodation would impose an undue hardship on the operation of the business." 42 U.S.C. 12112(b)(5)(A).

EEOC regulations implementing Title I of the ADA define the term "major life activities" to include "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. 1630.2(i). A regulation promulgated by the Justice Department contains the same definition of the term "major life activities" for purposes of Section 504 of the Rehabilitation Act, see 28 C.F.R. 41.31(b)(2), as does a regulation promulgated by the Department of Labor for purposes of Section 503 of the Rehabilitation Act, see 41 C.F.R.

60-741.2(p). The EEOC's Title I regulations provide that an impairment "substantially limits" an individual if, as a result of the impairment, the person is (i) "[u]nable to perform a major life activity that the average person in the general population can perform," or (ii) "[s]ignificantly restricted as to the condition, manner or duration under which [he] can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." 29 C.F.R. 1630.2(j)(1). Those regulations contain a special definition of the term "substantially limits" with respect to the major life activity of working. In that context,

> [t]he term *substantially limits* means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.

29 C.F.R. 1630.2(j)(3)(i).

2. Beginning in 1990, respondent Ella Williams was employed as an assembly line worker in an auto manufacturing plant operated by petitioner Toyota Motor Manufacturing, Kentucky, Inc. Pet. App. 24a. As a result of her prolonged use of pneumatic tools, respondent developed carpal tunnel syndrome and tendinitis in her arms and hands. *Id.* at 2a, 24a.[1] Petitioner

[1] Because this case arises out of respondent's appeal from the district court's award of summary judgment to petitioner, the facts as set forth in the text reflect the record evidence taken in the light most favorable to respondent. See Pet. App. 2a.

subsequently placed respondent on a team in the Quality Control Inspection Operations unit of the assembly line. *Id.* at 25a. Respondent spent approximately three years inspecting cars on the assembly line for defective paint and manually wiping down each newly painted car as it passed on the conveyor. *Id.* at 2a, 26a. Her duties were then expanded to include new tasks, which required her to grip a block of wood and to keep her hands and arms around shoulder height repetitively over several hours. *Id.* at 2a, 26a-27a. Her ligament and muscle problems reappeared in a more severe form as a result of the new job, and she developed tendinitis in her shoulders and neck as well. *Id.* at 2a, 27a. Respondent requested to be assigned back to her former functions, which she could perform without difficulty. *Ibid.* Respondent alleges that petitioner refused to assign her back to her former job in the paint inspection section, and that the refusal constituted a failure to provide reasonable accommodation as required by the ADA. *Id.* at 2a, 27a-28a.

3. Respondent filed suit in federal district court, alleging that petitioner had violated, *inter alia*, the ADA. The district court granted petitioner's motion for summary judgment. Pet. App. 23a-54a. With respect to respondent's ADA claim, the court held that respondent was not substantially limited in any major life activity and therefore did not have a "disability" within the meaning of 42 U.S.C. 12102(2)(A).[2] Pet. App. 34a-42a.

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[2] The ADA also defines the term "disability" to include "a record of such an impairment," 42 U.S.C. 12102(2)(B), or "being regarded as having such an impairment," 42 U.S.C. 12102(2)(C). The district court held that respondent could not establish that she had a "disability" under either of those provisions. Pet. App. 43a-47a. Those holdings are not at issue in this Court. See note 3, *infra*.

Respondent contended that she was substantially limited in the major life activities of (1) performing manual tasks, (2) housework, (3) gardening, (4) playing with her children, (5) lifting, and (6) working. Pet. App. 34a, 37a. The district court rejected allegations (2)-(4) on the ground that "[w]hen compared to activities such as walking, seeing, hearing, speaking and breathing, the Court cannot find that gardening, housework, playing with, or otherwise recreating with others, are such significant activities to warrant their inclusion into the 'statutory rubric' of major life activities." *Id.* at 35a. The court found that allegation (1) was "irretrievably contradicted by [respondent's] continual insistence that she could perform the tasks in assembly and paint inspection without difficulty," since those duties required the performance of manual tasks. *Id.* at 36a. The court also stated that "no rational juror could conclude that [respondent] is substantially limited in her ability to perform manual tasks" because respondent had "failed to present any evidence regarding the nature and severity of [her] impairment, the duration or expected duration of her impairment, or the permanent or long term impact resulting from the impairment." *Ibid.* The district court also rejected allegation (5) because respondent had failed to present evidence sufficient to persuade a rational juror that her ability to lift was substantially limited. *Id.* at 36a-37a.

The district court then addressed respondent's claim that she was substantially limited in the major life activity of "working." Pet. App. 37a-42a. The court explained that, to prevail on that theory, respondent was required to show that her impairment excluded her from a significant range of jobs. *Id.* at 37a-38a. The court acknowledged that respondent had offered expert vocational evidence that, as a result of her impairment,

"the number of jobs in the economy that [she] can perform has been reduced by 50% to 55%." *Id.* at 38a. It stated, however, that under the applicable regulations, the "determination of whether one is substantially limited in the major life activity of working requires an examination, and therefore evidence, of a claimant's ability, or inability, to access the job market *in her own geographical area*." *Id.* at 40a. Based on its view that the evidence proffered by respondent "offers no assistance in evaluating her true employability within *her own geographical area*," the district court concluded that respondent "cannot show that she is substantially limited in the major life activity of working." *Ibid.*

4. The court of appeals reversed. Pet. App. 1a-11a. The court's analysis focused on respondent's ability to perform work-related manual tasks. The court of appeals cited the EEOC regulation that specifically addresses limitations on the "major life activity" of "working," see 29 C.F.R. 1630.2(j)(3) (quoted at p. 3, *supra*), and this Court's discussion of that regulation in *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471 (1999), for the proposition that an individual "must be precluded from * * * a substantial class of jobs" in order to establish disability based on the major life activity of "working." Pet. App. 4a. The court recognized that respondent "asserts primarily that her impairments disable her from performing manual tasks, a different disability from 'working.'" *Ibid.* (footnote omitted). The court of appeals nevertheless concluded that "in order to be disabled [respondent] must show that her manual disability involves a 'class' of manual activities affecting the ability to perform tasks at work." *Ibid.*

Applying that standard, the court concluded that

> taking the evidence in the light most favorable to the plaintiff, * * * [respondent's] set of impairments to her arms, shoulders and neck are sufficiently disabling to allow the factfinder to find she crosses the threshold into the protected class of individuals under the ADA who must be accorded reasonable accommodation. Her ailments are analogous to having missing, damaged or deformed limbs that prevent her from doing the tasks associated with certain types of manual assembly line jobs, manual product handling jobs and manual building trade jobs (painting, plumbing, roofing, etc.) that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time.

Ibid. The court of appeals acknowledged that respondent could "perform a range of isolated, non-repetitive manual tasks performed over a short period of time, such as tending to her personal hygiene or carrying out personal or household chores." *Ibid.* The court concluded, however, that respondent's ability to perform those tasks "does not effect [*sic*] a determination that her impairment substantially limits her ability to perform the range of manual tasks associated with an assembly line job." *Ibid.*[3]

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[3] The court of appeals stated that "[a]lthough [respondent] has also claimed that she is substantially limited in the major life activities of lifting and working, in addition to manual tasks, her counsel conceded during oral argument that [respondent's] strongest claim pertained to the major life activity of performing manual tasks." Pet. App. 4a n.1. In light of its determination that respondent had presented sufficient evidence with respect to the performance of manual tasks, the court declined to determine whether respondent was also "substantially limited as to the major life activities of lifting or working." *Id.* at 5a. For similar reasons,

Judge Boggs dissented from the court of appeals' disposition of respondent's ADA claim. He noted that although respondent's physical impairment prevented her from performing the tasks associated with a discrete range of jobs, "this inability to perform certain types of tasks would not likely constitute being disabled with regard to the major life activity of working. In particular, this court has held that the inability to perform a single, particular job does not constitute a substantial limitation on working." Pet. App. 9a (citing *Gilday* v. *Mecosta County*, 124 F.3d 760, 767 (6th Cir. 1997) (Kennedy, J., concurring in part and dissenting in part) (collecting cases)).

Judge Boggs concluded that respondent was likewise unable to demonstrate a substantial limitation on the "major life activity" of "performing manual tasks." He explained that the record demonstrated respondent's ability to perform many work-related manual tasks, as well as "the manual tasks of brushing her teeth, laundering her clothes, and doing some driving." Pet. App. 9a. In Judge Boggs's view, the manual tasks that respondent was demonstrably unable to perform were almost exclusively tasks connected to a narrow range of jobs. *Id.* at 9a-10a. Judge Boggs concluded that if respondent's inability to perform those tasks was an insufficient basis for finding a substantial limitation on her ability to work, there was no logical ground for treating her impairment as a substantial limitation on her ability to perform manual tasks. *Id.* at 10a-11a.

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the court found it unnecessary to address respondent's alternative claims that she had a "record" of qualifying impairment, see 42 U.S.C. 12102(2)(B), or was "regarded as" disabled, see 42 U.S.C. 12102(2)(C). Pet. App. 6a.

SUMMARY OF ARGUMENT

Under the pertinent EEOC regulations and this Court's decision in *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471 (1999), an ADA plaintiff cannot establish that he is "substantially limited" in the "major life activity" of "working" simply through proof that his impairment precludes him from performing a particular job or a narrow category of jobs. Rather, an individual is "substantially limited" in "working" only if his impairment excludes him from a class of jobs or a broad range of jobs in various classes. Where a plaintiff alleges that he is substantially limited in the activity of "performing manual tasks," and the tasks he identifies are solely work-related, the plaintiff should likewise be required to show that as a result of his impairment he is excluded from a class of jobs or a broad range of jobs. Any other approach would permit circumvention of the rules that govern claims based on "working," because an inability to perform a particular job can almost always be recharacterized as an inability to perform the manual tasks or functions associated with that job.

The court of appeals decided this case on the apparent assumption that respondent was *not* substantially limited in the major life activity of "working." The court nevertheless held that respondent could show a substantial limitation on the activity of "performing manual tasks," based solely on her inability to perform *work-related* manual tasks. That approach was erroneous and would subvert the established rule that a plaintiff must prove exclusion from a class of jobs or a broad range of jobs in order to establish disability based on "working."

The approach adopted by the court of appeals not only threatens to circumvent the proper analysis of the

major life activity of "working," but also produces a truncated and incomplete analysis of the major life activity of "performing manual tasks." By focusing only on manual tasks undertaken in the workplace, the court of appeals failed to evaluate the full extent of respondent's limitations with respect to manual tasks generally. In considering major life activities other than working, judicial inquiry cannot properly be limited to effects of the individual's impairment that are evidenced in the workplace. Indeed, a principal goal of the ADA is to ensure that disabilities that do not affect a person's actual ability to function in the workplace will not be used as a basis for irrationally limiting the employment opportunities of qualified disabled individuals.

For the foregoing reasons, the court of appeals employed an incorrect legal analysis. Accordingly, the court's judgment should be vacated and the case should be remanded for further proceedings. On remand, respondent may be able to demonstrate, under the appropriate legal standards, that the record evidence is sufficient to preclude summary judgment for petitioner on the question whether respondent is substantially limited as to (a) working and/or (b) performing manual tasks.

ARGUMENT

I. THE COURT OF APPEALS' APPROACH TO THE MAJOR LIFE ACTIVITY OF "PERFORMING MANUAL TASKS" WOULD SUBVERT THE ESTABLISHED RULE THAT AN INDIVIDUAL IS SUBSTANTIALLY LIMITED IN THE MAJOR LIFE ACTIVITY OF "WORKING" ONLY IF HIS IMPAIRMENT EXCLUDES HIM FROM A CLASS OR BROAD RANGE OF JOBS

A. The EEOC's regulations provide that, in order to establish a substantial limitation in the major life activity of working, a plaintiff must show that he is "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." 29 C.F.R. 1630.2(j)(3)(i). In *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471 (1999), this Court "[a]ssum[ed] without deciding that working is a major life activity and that the EEOC regulations interpreting the term 'substantially limits' are reasonable." *Id.* at 492. Applying those regulations, the Court held that "[w]hen the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires, at a minimum, that plaintiffs allege they are unable to work in a broad class of jobs." *Id.* at 491. It is therefore clear that a plaintiff cannot establish that he is "substantially limit[ed]" in the "major life activity" of "working" simply through proof that his impairment precludes him from performing a particular job or a narrow category of jobs. See, *e.g.*, *Duncan* v. *WMATA*, 240 F.3d 1110, 1115 (D.C. Cir. 2001) (en banc) (testimony that the plaintiff "was not qualified for the particular kind of job—truck dri-

ver—for which he chose to apply" was insufficient to demonstrate that the plaintiff was substantially limited in the major life activity of working), petition for cert. pending, No. 00-1776; cf. *Murphy* v. *UPS*, 527 U.S. 516, 523 (1999) ("to be regarded as substantially limited in the major life activity of working, one must be regarded as precluded from more than a particular job").

B. An inability to perform a particular job virtually always can be recharacterized as an inability to perform the manual tasks or functions associated with that job. The limiting principle described above would therefore be wholly undermined if a plaintiff whose impairment excluded him from an employment category too small to constitute a class of jobs or a broad range of jobs (and who therefore could not show a substantial limitation on the major life activity of "working") could nevertheless establish a disability based solely on his inability to perform the manual tasks associated with that narrow category of jobs. If a plaintiff claims that he is "substantially limited" in the activity of "performing manual tasks," and if the tasks he identifies are solely work-related, his inability to perform those tasks should be regarded as a "disability" only if the category of jobs from which he is thereby excluded is sufficiently broad so that he is substantially limited in "working."[4]

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[4] The situation described in the text—*i.e.*, where a plaintiff attempts to prove a substantial limitation on the performance of manual tasks solely by reference to work-related tasks—may not arise with great frequency, because a physical impairment that affects a plaintiff's ability to work will often have effects outside the workplace as well. That will not always be true, however. For example, a person whose impairment renders him unable to perform a particular task continuously or repetitively for a prolonged period of time, see Pet. App. 4a (stating that respondent's impairments "prevent her from doing the tasks associated with certain types of * * * jobs * * * that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time"), may be excluded from certain jobs without being significantly restricted in other areas of his life. An impairment that renders an individual unable to perform an especially demanding task—*e.g.*, to lift very heavy objects, or to perform delicate operations requiring an unusual degree of dexterity—may also disqualify the individual from particular jobs without restricting him outside the workplace (or in the workplace for any class or broad range of jobs). Such determinations are to be made on an individualized basis. See *Sutton*, 527 U.S. at 483.

C. In granting petitioner's motion for summary judgment, the district court found that respondent had failed to present evidence sufficient to persuade a reasonable juror that she was substantially limited in the major life activity of "working." See Pet. App. 37a-42a. Although the court of appeals did not specifically address that conclusion, the court appeared to decide this case on the assumption that respondent was *not* excluded from a class of jobs or a sufficiently broad range of jobs to allow her to establish a substantial limitation on her ability to work.[5]

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[5] The precise basis of that assumption is unclear. The court of appeals stated that "[respondent] asserts primarily that her impairments disable her from performing manual tasks, a different disability from 'working,' the disability at issue in the *Sutton* case." Pet. App. 4a (footnote omitted). The court further observed that "[a]lthough [respondent] has also claimed that she is substantially limited in the major life activities of lifting and working, in addition to manual tasks, her counsel conceded during oral argument that [respondent's] strongest claim pertained to the major life activity of performing manual tasks." *Id.* at 4a n.1. Those statements might suggest that the court understood respondent essentially to have conceded that she could not establish a substantial limitation on the "major life activity" of "working." On the other hand, the court also stated that "[b]ecause we conclude that [respondent] is substantially limited in performing manual tasks, we do not need

The court of appeals nevertheless held that respondent could show a substantial limitation on the activity of "performing manual tasks," based solely on her inability to perform work-related tasks. Thus, the court stated that "in order to be disabled [respondent] must show that her manual disability involves a 'class' of manual activities affecting the ability to perform tasks at work." Pet. App. 4a. It found that respondent's "ailments are analogous to having missing, damaged or deformed limbs that prevent her from doing the tasks associated with certain types of * * * jobs * * * that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time." *Ibid.* The court further observed that "[t]he fact that [respondent] can perform a range of isolated, non-repetitive manual tasks performed over a short period of time, such as tending to her personal hygiene or carrying out personal or household chores, does not effect [*sic*] a determination that her impairment substantially limits her ability to perform the range of manual tasks associated with an assembly line job." *Ibid.* The court also described respondent's claim as resting on "the rather simple concept that she is disabled as to performing manual tasks because she suffers from a severe impairment to her limbs, shoulders and neck that seriously reduces her ability to perform the manual tasks that are job-related." *Id.* at 5a.

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to determine whether [respondent] is substantially limited as to the major life activities of lifting or working." *Id.* at 5a. That formulation suggests that the court simply assumed, *arguendo*, that respondent could not resist summary judgment with respect to "working."

Those statements strongly suggest an exclusive focus on *work-related* manual tasks.[6] And a subsequent Sixth Circuit decision construes the decision below in precisely that manner. In *Kiphart* v. *Saturn Corp.*, No. 99-6656, 2001 WL 587850 (May 31, 2001), the court stated that "[t]o demonstrate a substantial limitation in the performance of manual tasks, a plaintiff must prove his 'manual disability involves a "class" of manual activities affecting the ability to perform tasks at work.'" *Id.* at *8 (quoting Pet. App. 4a). The *Kiphart* court's description of the court of appeals' opinion in this case (see *ibid.*) focused solely on the evidence suggesting that respondent was unable to perform various *work-related* manual tasks. Thus, in *Kiphart* as in the instant case, the Sixth Circuit held that the plaintiff could establish a substantial limitation on the "major life activity" of "performing manual tasks," based solely on work-related manual tasks, without deciding whether the plaintiff was substantially limited in the "major life activity" of "working."[7] That approach is erroneous and would subvert the established rule that a plaintiff must prove exclusion from a class of

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[6] The court of appeals did state later in its opinion that respondent's impairments "are sufficiently severe to be like deformed limbs and such activities affect manual tasks associated with working, *as well as manual tasks associated with recreation, household chores and living generally*." Pet. App. 6a (emphasis added). But that observation appears disconnected from the Sixth Circuit's legal analysis.

[7] The *Kiphart* court concluded that "a reasonable jury could have determined Kiphart's impairments substantially limited his ability to perform an entire class of manual activities associated with assembly-line and product-handling jobs involving the use of vibrating hand-held power tools and requiring frequent, repetitive twisting, bending, or flexing of the wrists, elbows, or neck." 2001 WL 587850, at *9.

jobs or a broad range of jobs in various classes in order to establish disability based on "working." See pp. 11-12, *supra*. Limiting the inquiry to the plaintiff's ability or inability to perform manual tasks in the workplace leads naturally to a focus on the employee's ability to perform the tasks associated with her particular job. The EEOC regulations, and this Court's decision in *Sutton*, preclude such a job-specific focus and mandate a broader perspective.

The court of appeals suggested (Pet. App. 5a-6a) that its mode of analysis was consistent with (or, indeed, mandated by) the principle that a court should consider the major life activity of working only "[i]f an individual is not substantially limited with respect to any other major life activity." 29 C.F.R. Pt. 1630, App. § 1630.2(j); see *Sutton*, 527 U.S. at 492. But that direction as to the appropriate order of proceeding presupposes a proper application of tests for major life activities other than working. The decision below improperly truncated the analysis of manual tasks, with the effect of circumventing the rules governing the analysis of working.

By focusing on manual tasks "in the workplace," the court of appeals converted respondent's manual tasks claim into a working claim. However, in the process of conversion, the court of appeals omitted the requirement that the employee's impairment affect her ability to perform a class or broad range of jobs. The court of appeals' approach does not comply with principles of orderly decisionmaking; it simply enabled the court to find sufficient evidence of disability, based solely on the effects of respondent's impairment on her job performance (and consequent employability), without making the requisite determination whether respondent was excluded from a broad or narrow category of jobs.[8]

II. BY LIMITING ITS ANALYSIS TO THE PERFORMANCE OF WORK-RELATED MANUAL TASKS, THE COURT OF APPEALS FAILED TO UNDERTAKE AN APPROPRIATE ANALYSIS OF ANY PROPERLY DEFINED "MAJOR LIFE ACTIVITY"

The court of appeals' analysis places undue emphasis on the extent to which a disability is manifested in the workplace and affects job performance. In articulating the standard for establishing a substantial limitation on the ability to perform manual tasks, the court of appeals stated that "to be disabled the plaintiff must show that her manual disability involves a 'class' of manual activities *affecting the ability to perform tasks at work*." Pet. App. 4a (emphasis added). The court then concluded that respondent's ability to perform "personal or household chores, does not effect [*sic*] a determination that *her impairment substantially limits her ability to perform the range of manual tasks associated with an*

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[8] The petition for certiorari argues that "'working' and 'performing manual tasks' are indeed distinct inquiries, and that each must be resolved without reference to the other." Pet. 21. The petition further contends that by "evaluat[ing] how an impairment affects a plaintiff's ability to work in order to determine whether that impairment limits the major life activity of performing manual tasks," the court of appeals "improperly fuse[d] two distinct analyses into one." *Ibid.* In our view, the greater defect in the court of appeals' approach is that, in fusing the two inquiries, the court eliminated an important aspect of the working inquiry—namely, the determination whether respondent's impairment had the effect of excluding her from a class or broad range of jobs.

assembly line job." *Ibid.* (emphasis added). The court thus (a) held that an ADA plaintiff who alleges a substantial limitation on the activity of "performing manual tasks" must prove an adverse effect on job performance, and (b) improperly truncated its examination of respondent's "manual tasks" claim by treating the performance of work-related manual tasks as though it were a "major life activity." Both aspects of the court's analysis are erroneous.

A. The statutory definition of "disability" (42 U.S.C. 12102(2)) clearly encompasses impairments that have no effect on job performance. See, *e.g.*, *Bragdon* v. *Abbott*, 524 U.S. 624, 638 (1998) (holding that "[r]eproduction falls well within the phrase 'major life activity,'" and that "[n]othing in the [ADA] definition [of 'disability'] suggests that activities without a public, economic, or daily dimension may somehow be regarded as so unimportant or insignificant as to fall outside the meaning of the word 'major'"); *id.* at 639 ("The inclusion [in the regulations] of activities such as caring for one's self and performing manual tasks belies the suggestion that a task must have a public or economic character in order to be a major life activity for purposes of the ADA."). With the obvious exception of "working," proof that an individual is substantially limited in one of the major life activities identified in the regulations does not require a showing that his impairment affects job performance. In particular, an individual whose impairment substantially limits his ability to perform manual tasks has a "disability" within the meaning of the ADA, even if the tasks that the individual is unable

to perform all occur off the job and the impairment does not affect his "ability to perform tasks at work."[9]

Title I of the ADA generally prohibits employment discrimination "against a qualified individual with a disability because of the disability of such individual." 42 U.S.C. 12112(a). Title I defines the term "qualified individual with a disability" to mean "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. 12111(8). That the definition of "qualified individual with a disability" includes a person who can perform the relevant job "without * * * accommodation" reinforces the conclusion that proof of an effect on job performance is not necessary to establish the existence of a "disability." It would be perverse, moreover, to suggest that an individual who is substantially limited in some other "major life activity" could be deprived of Title I's employment protections on the ground that her performance of work-related functions is *not* impaired. Indeed, a major goal of the ADA is to ensure that disabilities that do not affect a person's actual ability to function in the workplace will

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[9] Respondent's brief in opposition to the petition for certiorari reflects the same misunderstanding as the court of appeals' opinion. Respondent states that "[i]t is appropriate that the impairment claimed always 'affect' or be related to employment because [Title I] of the ADA only relates to employment." Br. in Opp. 9 (citing 42 U.S.C. 12112(a)). That is a non sequitur. It is true that Section 12112(a) applies only to disability-based discrimination in employment, and that "[t]he ADA does not prohibit disability discrimination in social settings." *Ibid.* But the fact that the *discrimination* proscribed by Title I is limited to employment practices does not mean that the *impairment* must have workplace effects in order to constitute a disability.

not be used as a basis for irrationally limiting the employment opportunities of qualified disabled individuals.

B. The requirement that an impairment must substantially limit one or more "major life activities" of an individual is at the heart of the ADA's definition of "disability." See 42 U.S.C. 12102(2)(A). The term "major" indicates that only fundamental activities will qualify, and the activities identified in the applicable EEOC regulation, see 29 C.F.R. 1630.2(i) (defining major life activities to include "functions such as caring for onself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working"), reinforce that reading. In holding that reproduction is a major life activity, this Court noted that "[r]eproduction and the sexual dynamics surrounding it are central to the life process itself." *Bragdon*, 524 U.S. at 638. Although the pertinent EEOC regulation does not purport to provide an exhaustive catalogue of "major life activities," see *id.* at 638-639, the fundamental character of the enumerated activities indicates that courts should proceed with caution in identifying "major life activities" other than those listed in the regulation. In particular, it is inappropriate to define as a "major life activity" a work-related subset (*e.g.*, "hearing" or "seeing" in the workplace) of one of the activities enumerated in the rule.

The performance of work-related manual tasks is a subset of both "performing manual tasks" and "working," but it is not itself defined in the pertinent regulations as a "major life activity." By framing the question before it as whether respondent was substantially limited in performing work-related manual tasks, the court of appeals essentially declined to consider evidence that would have been directly relevant to analysis of a properly defined "major life activity." A proper determination whether a plaintiff is substantially limited in "working" would generally include consideration of his ability (or inability) to carry out jobs that do not significantly entail the performance of manual tasks. And a proper determination whether a plaintiff is substantially limited in "performing manual tasks" would include an assessment of his ability (or inability) to perform manual tasks outside the workplace as well as those on the job.[10] The court of appeals failed to perform either of those analyses.

[10] The court of appeals' truncated analysis of manual tasks is neither pro-employee nor pro-employer; it is simply erroneous. The effect of truncating the "manual tasks" inquiry by focusing only on work-related tasks will likely work to the advantage of some plaintiffs and to the disadvantage of others. On the one hand, an exclusive focus on work-related tasks may cause workplace restrictions to appear more "substantial" by reducing the universe of potential manual tasks, thereby increasing the likelihood that some plaintiffs (particularly those whose impairments manifest themselves most severely on the job) will be found to be disabled. On the other hand, a refusal to consider the individual's inability to perform non-work-related tasks may unfairly deny the protections of the Act to other persons who are fully able to function in the relevant workplace but who are substantially limited in the performance of manual tasks generally.

III. THIS CASE SHOULD BE REMANDED TO ALLOW THE COURT OF APPEALS TO DETERMINE, BASED ON APPROPRIATE LEGAL STANDARDS, WHETHER RESPONDENT HAS PRESENTED SUFFICIENT EVIDENCE THAT SHE IS SUBSTANTIALLY LIMITED IN THE MAJOR LIFE ACTIVITIES OF EITHER "WORKING" OR "PERFORMING MANUAL TASKS"

For the foregoing reasons, this Court should vacate the court of appeals' judgment and remand the case to permit the courts below to determine, under the correct legal standards, whether respondent has adduced evidence sufficient to foreclose summary judgment for petitioner on the question whether respondent is substantially limited in the major life activities of either "working" or "performing manual tasks."[11] The following observations may be relevant to the proceedings on remand:

A. Although an ADA plaintiff cannot establish a substantial limitation on "working" based on exclusion from a particular job or narrow class of jobs, "an individual does not have to be totally unable to work in order to be considered substantially limited in the major life activity of working." 29 C.F.R. Pt. 1630, App. § 1630.2(j); cf. *Bragdon*, 524 U.S. at 641 ("The Act addresses substantial limitations on major life activities, not utter inabilities."). Thus, the fact that respondent can perform some assembly line jobs does not, in and of itself, preclude her from establishing that she is

[11] The courts below can also address on remand respondent's alternative claims that she has a "record" of qualifying impairment, see 42 U.S.C. 12102(2)(B), and that she is "regarded as" disabled, see 42 U.S.C. 12102(2)(C). See notes 2, 3, *supra*.

substantially limited in the "major life activity" of "working."

As we explain above, the court of appeals appeared to decide this case on the assumption that respondent was not excluded from a class of jobs or from a sufficiently broad range of jobs to establish disability based on "working." The court did not squarely resolve that question, however, and it remains open to respondent on remand to challenge the district court's adverse ruling on that point. The government takes no position on the question whether respondent's evidence on that point is sufficient to withstand petitioner's motion for summary judgment.

B. A plaintiff may sometimes be able to establish a "disability" based on an inability to perform, or substantial restrictions on the performance of, a combination of work-related and non-work-related manual tasks. Thus, even if respondent is unable on remand to establish a substantial limitation on the activity of "working," her inability to perform the manual tasks associated with a particular job or narrow category of jobs might still support a claim of disability if respondent can also demonstrate that her impairment substantially limits her ability to perform manual tasks outside the workplace.

The court of appeals briefly alluded to respondent's contention that her impairments affect her ability to perform "manual tasks associated with recreation, household chores and living generally," Pet. App. 6a, but it undertook no meaningful analysis of the record evidence bearing on respondent's ability to perform non-work-related manual tasks. (The court's failure to perform such an analysis may have resulted from its misconception that to demonstrate a substantial limitation on the activity of "performing manual tasks," an

ADA "plaintiff must show that her manual disability involves a 'class' of manual activities affecting the ability to perform tasks at work." *Id.* at 4a; see pp. 18-20, *supra*.) Although the court of appeals' analysis of the "manual tasks" issue was legally flawed, respondent may still be able to prevail on remand under the appropriate legal standards if she can establish a substantial limitation on her ability to perform a combination of work-related and non-work-related manual tasks. The government takes no position on the question whether respondent presented sufficient evidence to withstand petitioner's motion for summary judgment on that point.

CONCLUSION

The judgment of the court of appeals should be vacated, and the case should be remanded to the court of appeals for further consideration under the appropriate legal standards.

Respectfully submitted.

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